7/24/71

Dear Jim, Re; Cowles Communication v. DJ et al,

Prior to reaching the part you marked on the third page of the judgment, I had marked the second and third complete sentences at the top of page two for a different reason, the possibility that at some time in the future Justice will cite out of context from the bottom of this page. The context is inaccoord with the part you marked and the order, that the file must to begin with be an investigatory file and more, for law-enforcement purposes. All his references to files are in this context.

On the basis of these few words, it seems to me that he went beyond the Cowles pleading and properly, in the interest of justice, to determine this point, whether it was, in fact, an investigatory file for law-enforcement purposes, and the clear meaning that if there is no such purpose there is no exemption, which is exactly the meaning we have found in the language of the law. All investigatory files are not covered or there would be no point in his in camera inspection.

This is the issue Mitchell dodged in 713-70, where he knew he could not possibly prevail.

However, I find myself in accord with the judge's opinion that if files are genuinely copiled for the purpose of enforcing a law, they are exempt. I think it foolish to think or argue otherwise, and at best a self-deception.

In every case I have filed or have in mind, there is no possibility of law-enforcement intent, no law to be enforced, no secret process or informant to protect. The best we can hope for and the maximum we should attempt is to give viability to the intent to make files not covered by the exemptions available. To this we can add a record of proving that when suppression cannot be achieved by other means, this exemption is deceptively and fraudulently invoked. (Hence my desire that Bud charge perjury against Williams.)

I don't know your opinion, but mine is that this judge acted properly and wisely and did read the law as Congress intended, and that this ruling can help us. You see, we do not face the problem of having anyone decide whether the purpose of compilation was law-enforcement. It is up to the government to prove that this was the purpose of compilation. Unless they do this they have no exemption. Bud and I each approached this differently, each correctly, he by asking what law was being enforced and me by showing there was no possibility of any law-enforcement purpose.

Now, the time will come when they will again claim it with me, where there is one possibility of their making the claim legitimately. In they do, I will be content. You will in time understand, for I'll tell you when we have time to talk, long before I file.

And, having just read Fred Cook's second instalment of modern Genesis, I'm ready to start breaking heads with the next violation of confidence. (If you haven't read the first, a copy of which was given me without identification of the first, depending on the condition of your stomach and mind, you should.)

(Prospero said it all, in bracketing; dreams and "such wondrous people.)

I'm glad to have this. Do you know of any other case in which any major-media use of 5 U.S.C.552 was made? I don't. I'm trying to encourage it. I had a conference with a lawyer for one about a month ago, but the thing that seems to mitigate against it is time, news being of such a nature that the filing of an action ends description as news. However, it does not as special article, feature or documentary. I have a few things in mind when I can get to speak to the right people.

This, I would suggest, is an excellent decision for use within the jurisdiction of the U.S.District Court for the Northern District of Calif., namely bu Hoch if not others. Should he or others (responsible), we can help them with what we have, I think.

Thanks,

Harold Weisberg